

(b) in respect of loss of future earnings \$24,000.

As regards (a) the learned judge said:

"The Defence Counsel suggested that for the injuries to the Plaintiff as regards $\frac{1}{2}$ inch laceration, 1 inch shortening of the left leg and the lack of 5" movement a sum of \$8,000/- be awarded. He quoted the case of *Kim Ju Kiang v. Loh Kai Mee*⁽²⁾ where the plaintiff was awarded a sum of \$8,000/-. However, the case referred to by him was that the plaintiff there suffered only compound fractures of the leg tibia and fibula whereas in the instant case the plaintiff suffered comminuted fracture of both left and right tibia and fibula. That case occurred in 1970. The plaintiff's counsel also quoted *Maya binte Hashim v. Nadarajah s/o Thangavaloo*⁽³⁾ where a sum of \$15,000/- was awarded and *Yew Chek Hwa v. Mathews*⁽⁴⁾ where a sum of \$12,000/- was awarded. He suggested a figure of \$15,000/- to \$18,000/-. I shall allow the plaintiff a sum of \$15,000/- for this."

Before us Mr. Chin referred us to *Kim Ju Kiang*⁽²⁾ mentioned by the trial judge, and also to *Yew Chek Hwa v. Mathews*,⁽⁴⁾ *Jones v. Griffith*⁽⁵⁾ mentioned by Bingham, 7th edition, at page 558, and to *McAuley v. London Transport Executive*⁽¹⁾ and to McGregor on Damages, 13th edition, para. 87. He stressed that the plaintiff had ignored medical advice. He also said that the plaintiff had failed to produce an X-ray. He submitted that the present award is about 25% more than the usual level and that in view of all this, at the most the plaintiff should have been awarded only about \$12,000 being:—

- (a) \$8,000 for the shortening of the leg; and
- (b) \$4,000 for the injury to both limbs.

As regards (b), the learned judge said:—

"As regards loss of future earnings, the Defence Counsel suggested 20 years purchase at \$120 and the amount would come to a sum of \$17,395.70. The Defence Counsel did not make any suggestion with regard to actual loss of earnings after the accident. The Plaintiff's Counsel in the submission as regards the loss of future earnings also suggested a period of 20 years purchase but at a figure of \$220 per month.

I think \$220 per month is rather on high side considering the plaintiff would be getting a lump sum and further he is not wholly incapable of doing any other job, fishing for instance, and there is evidence he is still doing some fishing. He can still continue to do light work although he could not carry heavy loads and considering the average earning of the plaintiff before the accident was \$191.98, I would consider \$160 per month would be a fair figure at 20 years purchase and this will come to a sum of \$23,923.20 and I shall award the sum of \$24,000 being the round figure."

Before us Mr. Chin submitted that at the most the plaintiff should get only about \$12,000, as he can do light work, and he drew our attention to *Ti Huck v. Mohamed Yusof*,⁽⁵⁾ *Khoo See Moi*⁽⁶⁾ and to paragraphs 1,113 and 1,114 in *MacGregor*.

We have looked up the authorities and carefully considered Mr. Chin's submission and are of the opinion that the learned judge has not acted on a wrong principle of law, nor misapprehended the facts nor made a wholly erroneous estimate of the damage suffered. In our view the quantum is not inordinately excessive in the light of the cases, and so we dismiss this appeal, with costs.

The appellants' deposit to be paid to the respondent against his taxed costs.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Khoo & Sidhu.*

N.T.S. ARUMUGAM PILLAI v. GOVERNMENT OF MALAYSIA

[F.C. (Suffian L.P., Ong Hock Sim and
Wan Suleiman F.J.) March 15, 1977]

[Kuala Lumpur—Federal Court Civil Appeal No. 155 of 1976]

Practice and Procedure — Execution — Writ of Seizure and Sale — Auction sale — Conduct of.

This was an appeal from the dismissal by the High Court of an application to set aside the auction sale held pursuant to a writ of seizure and sale of land belonging to the appellant and at which the land was sold to the Kedah State Development Corp. It was argued on the appeal (a) that the learned judge erred in failing to hold that the Kedah State Development Corporation was indistinct from the plaintiff, the Government of Malaysia and therefore not entitled to bid at the sale without leave of the court (b) that because of the serious allegations made regarding the sale, the sale should be set aside as being unfair and unjust.

Held, dismissing the appeal: (1) the Kedah State Development Corporation was established under the Kedah State Development Corporation Enactment, 1965, and could not by any stretch of imagination be equated with the Government of Malaysia;

(2) there was no evidence in this case of malpractice or non-compliance with established practice in the conduct of auction sales.

FEDERAL COURT.

A. Jayadeva (K. Chandra with him) for the appellant.

Abdul Rashid bin Abdul Manaf (Jaafar Mohamed Saman with him) for the respondent.

Ooi Gin Sun for the Kedah State Development Corporation.

Ong Hock Sim F.J. (delivering the judgment of the Court): This appeal is from a dismissal by the High Court, Penang, of an application to set aside the auction sale held at the Key Sales Room, No. 13, Church Street, Penang on September 30, 1976, pursuant to a Writ of Seizure and Sale, of the United Patani Estate, Sungei Patani belonging to the appellant, to the Kedah State Development Corporation (hereinafter referred to as the "Corporation").

The main ground of complaint is that the learned judge erred in failing to hold that the Corporation was indistinct from the plaintiff, the Government of Malaysia and therefore not entitled to bid at the sale without leave of the court. We do not think there is merit in this ground, as the Kedah State Development Corporation Enactment, 1965, established the Corporation as a legal entity which cannot by any stretch of imagination be equated with the Government of Malaysia.

Counsel for the appellant urged that an adverse inference should be drawn from the presence of public officers at the auction that intending purchasers were intimidated from bidding. Here perhaps we should quote some parts of the judgment:—

"The brief history of the matter is that the plaintiff having obtained judgment against the defendant for income tax owing to the plaintiff executed the judgment by attaching the defendant's property known as United Patani Estate in Kedah by a Writ of Seizure and Sale. The said lands were then ordered to be sold by public tender on August 9, 1976. The reserve price was fixed at \$30,000,000 but although the sale was advertised, only three tenders were received and the highest of them was \$9,000,000. The sale thus being abortive, a sale by public auction was ordered and the reserve price was fixed at \$15,000,000.

The auction accordingly took place. The Kedah State Development Corporation bid \$15,000,000 for the said property

and as there were no other bidders who offered a higher price, the property was sold to the Kedah State Development Corporation who paid the required deposit of \$1,500,000 by a banker's cheque."

Serious allegations were made that "the Chairman of the Kedah State Development Corporation and his legal advisers stated that the Kedah State Government wanted to acquire the said property for the Corporation and that if anybody else successfully bid and purchased the property, the Government would then acquire it. The defendant states that because of this when the Chairman of the Corporation made his bid of \$15,000,000 no one else wanted to bid against him as a result of what had been intimated to them. The defendant further states that if the State Government wanted the land, they should have compulsorily acquired it and not bid at the sale. According to the defendant, these factors made the conduct of the sale unfair and unjust."

These allegations were categorically denied by the Manager of the Corporation and by the auctioneer and an Inland Revenue Officer present at the auction. Suffice it to say that here again we can find no reason to disagree with the learned judge's conclusion when he says:—

"A certain Lim Kim Suan filed an affidavit in support of the defendant's allegations but his affidavit is vague. He does not even know the identity of the person who made the successful bid nor the identities of the other alleged purchasers interested in the sale. If he had been there as a person interested in the conduct of the sale he would easily have found out the identity of the persons making the alleged statements which prevented the others from bidding and the identity of the others who were so affected.

In considering the weight to be attached to the allegations in affidavits, it is to be noted that the defendant's averments are not from his own knowledge as he was not present at the sale as is evidenced by Lim Kim Suan's affidavit. But his evidence while not stating the sources of his information has far more and detailed allegations than Lim Kim Suan who according to Lim Kim Suan's affidavit attended the sale at the defendant's request and he himself reported the proceedings to the defendant.

By itself the fact the defendant has not complied with Order 58 rule 3 in respect of the contents of affidavits would render it of little value to the court but when considered in the light of the affidavits of the General Manager of Kedah State Development, the auctioneer and the officer of the Inland Revenue Department, the court must reject the allegations of the defendants which could have rendered the auction sale void as a result of being conducted unfairly and unjustly. The court accepts the facts as stated by the Manager of the Kedah State Development Corporation in his affidavit."

Appellant's counsel submitted at pages 42-43 of the record that application to set aside may be made on ground of material irregularity or fraud. There was no allegation of either and the proviso is specific that even in such a case it was for the appellant to show he had sustained substantial injury.

One objection as to the mode of payment was abandoned at the hearing (ground 7 at page 46).

We see no reason to disagree with the decision of the learned judge. We find no evidence of malpractice or non-compliance with established practice in the conduct of auction sales.

Accordingly we dismissed this appeal with costs.

Appeal dismissed.

Solicitors: K. Chandru & Co.

N.T.S. ARUMUGAM PILLAI v. DIRECTOR-GENERAL OF INLAND REVENUE

[F.C. (Suffian L.P., Ong Hock Sim and Wan Suleiman F.JJ.)
March 15, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 127 of 1976]

Revenue Law — Income Tax — Back duty investigation — Additional assessments — Some additional assessments statute-barred unless there was fraud or wilful default — Procedure before Special Commissioners — Onus of proof — Whether taxpayer given opportunity to present his case — Whether rules of natural justice complied with — Income Tax Ordinance, 1947, ss. 69(1) and 76(3) — Income Tax Act, 1967, ss. 3, 9(3).

This was an appeal from the decision of Chang Min Tat J. reported at [1977] 1 M.L.J. 67. The appeal was based on two issues, (1) Whether the procedure followed by the Special Commissioners in arriving at their Deciding Order was correct, (2) Whether the appellant had opportunity to present his case, in other words, whether the rules of natural justice had been observed.

Held, dismissing the appeal: (1) the learned trial judge was correct in holding that the Special Commissioners were entitled to adopt the procedure they did;

(2) the learned trial judge was right in holding that it could not be said that the taxpayer had not been heard or had in any way been prevented from or hindered in meeting the case against him;

(3) there was no merit in the appeal or any ground upon which the court could come to a decision contrary to that of the Special Commissioners and the learned trial judge.

E FEDERAL COURT.

A. Jayadeva for the appellant.

Abdul Rashid bin Abdul Manaf (Jaafar Mohamed Saman with him) for the respondent.

Ong Hock Sim F.J. (delivering the judgment of the Court): This appeal was preceded by a Motion for leave to adduce further evidence which we rejected particularly as we can find no ground for acceding thereto. It raised substantially the reasons for the appellant's dissatisfaction with the Deciding Order of the Special Commissioners and the judgment of the High Court upon the case stated thereafter. We note that the appellant was not without legal advice and the new evidence was not such as has been uncovered after the case. We then heard the appeal.

Before us, counsel for the appellant elected to base his appeal entirely on two issues, namely:—

(1) Whether the procedure followed by the Special Commissioners in arriving at their Deciding Order was correct?

(2) Whether the appellant had opportunity to present his case, in other words, whether the principles of natural justice had been observed?

With respect to learned counsel, who assiduously pursued the arguments put forward both before the Special Commissioners and the High Court judge on the case stated, we do not, as did the Special Commissioners and the High Court Judge, find any merit or substance in them. We were referred to various provisions of the Income Tax Act, 1967 (the 5th Schedule). Having regard to the large amount of tax assessed, we had some sympathy with the appellant, but we can find no ground for criticizing the rulings by both the Special Commissioners and the learned